



FEDERAL ELECTION COMMISSION  
WASHINGTON, D.C. 20463

OCT 15 2007

Andrew D. Herman, Esq.  
Brand Law Group  
923 Fifteenth Street, NW  
Washington, DC 20005

RE: MUR 5766  
DRIVE

Dear Mr. Herman:

By letter dated July 3, 2006, your client, DRIVE, was notified that the Federal Election Commission found reason to believe that DRIVE violated 2 U.S.C. §§ 441b and 434(b). On July 18, 2006, DRIVE submitted a response to the Commission's reason to believe findings. After considering the circumstances of the matter, the Commission determined on October 11, 2007, to take no further action as to DRIVE with respect to the 2 U.S.C. § 441b violation. The Factual and Legal Analysis, which explains the basis for the Commission's decision, is enclosed

[REDACTED]

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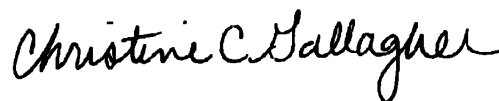
During conciliation, you may submit any factual or legal materials that you believe are relevant to the resolution of this matter. Because the Commission only enters into pre-probable cause conciliation in matters that it believes have a reasonable opportunity for settlement, we may proceed to the next step in the enforcement process if a mutually acceptable conciliation agreement cannot be reached within 60 days. See 2 U.S.C. § 437(g)(a), 11 C.F.R. Part 111 (Subpart A). Please note that once the Commission enters the next step in the enforcement process, it may decline to engage in further settlement discussions until after making a probable cause finding.

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Letter to Mr. Herman, Esq.  
MUR 5766  
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If you have any questions or suggestions for changes in the agreement, or if you wish to arrange a meeting in connection with a mutually satisfactory conciliation agreement, please contact me at (202) 694-1505.

Sincerely,



Christine C. Gallagher  
Attorney

Enclosures  
Factual and Legal Analysis  
[REDACTED]

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1 **FEDERAL ELECTION COMMISSION**

2 **FACTUAL AND LEGAL ANALYSIS**

3  
4 **RESPONDENTS:** Democrat Republican Independent Voter Education – MUR 5766  
5 PAC of the International Brotherhood of Teamsters and  
6 C. Thomas Keegel, in his official capacity as treasurer  
7

8 **I. BACKGROUND**  
9

10 This matter was generated based on information ascertained by the Federal Election  
11 Commission ("the Commission") in the normal course of carrying out its supervisory  
12 responsibilities. *See* 2 U.S.C. § 437g(a)(2). The Commission previously found reason to believe  
13 that Democrat Republican Independent Voter Education PAC of the International Brotherhood of  
14 Teamsters and C. Thomas Keegel, in his official capacity as treasurer ("DRIVE") violated  
15 2 U.S.C. § 441b in connection with two loans Amalgamated Bank made to DRIVE in October  
16 and November 2002 totaling \$500,000 and authorized an investigation into the matter.<sup>1</sup> *See* First  
17 General Counsel's Report, dated June 2, 2006. This finding was based on information contained  
18 in the Final Audit Report ("FAR") for DRIVE. The FAR showed, among other things, that the  
19 bank loans did not appear to be made in the ordinary course of business or on a basis that assured  
20 repayment as defined by the Act and the Commission's regulations. *See* 2 U.S.C. § 441b and  
21 11 C.F.R. § 100.7(b)(11); *see also* FAR (06-01), *Finding 1. Apparent Prohibited Contributions –*  
22 *Bank Loans*. Although the supporting loan documentation indicated that the loans were secured,  
23 the audit revealed that the loans were not, in fact, secured with the sources of collateral defined

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<sup>1</sup> All of the facts recounted in this Report occurred prior to the effective date of the Bipartisan Campaign Reform Act of 2002 ("BCRA"), Pub. L. 107-155, 116 Stat. 81 (2002). Accordingly, all citations to the Federal Election Campaign Act of 1971, as amended ("the Act"), herein are to the Act as it read prior to the effective date of BCRA and all citations to the Commission's regulations herein are to the 2002 edition of Title 11, Code of Federal Regulations, which was published prior to the Commission's promulgation of any regulations under BCRA.

1 by the Commission's regulations for meeting its standard for assurance of repayment (*i.e.*,  
2 perfected security interest in collateral, pledge of future receipts, and/or guarantee by secondary  
3 sources). *Id.*; *see also* 11 C.F.R. § 100.7(b)(11)(i)(A) and (B).

4 Based upon the evidence uncovered during the investigation, it appears that the bank  
5 loans were made on a basis that assures repayment when considering the totality of the  
6 circumstances. *See* 11 C.F.R. § 100.7(b)(11)(ii); *see also* Advisory Opinion 1994-26 (September  
7 26, 1994); Explanation and Justification for Regulations on Loans From Lending Institutions to  
8 Candidates and Political Committees, 56 Fed. Reg. 67118, 67119-67121 (Dec. 27, 1991).

## 9 II. FACTUAL AND LEGAL ANALYSIS

### 10 A. Given the Totality of the Circumstances, the Amalgamated Bank Loans to 11 DRIVE were Made on a Basis that Assures Repayment.

12  
13 Absent a perfected security interest in collateral or pledge of future receipts, the  
14 Commission will consider the totality of the circumstances in determining whether a loan was  
15 made on a basis that assures repayment. *See* 11 C.F.R. § 100.7(b)(11)(ii); *see also* Explanation  
16 and Justification, Loans from Lending Institutions to Candidates and Political Committees, 56  
17 Fed. Reg. 67118 (Dec. 27, 1991).

18 In reviewing the totality of the circumstances regarding assurance of repayment, a number  
19 of factors are evaluated in determining whether a bank could expect a loan to be repaid, including  
20 the borrower's financial situation (e.g., income and credit background), the borrower's pre-  
21 existing relationship to the lending bank, and the terms of the loan. *See* Advisory Opinion 1994-  
22 26; *see also* MURs 5198 (Cantwell 2006), 5262/5266 (Tim Ryan for Congress) and 5685 (Joe  
23 Turnham for Congress). As discussed more fully below, the evidence revealed during the

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1 investigation has established that Amalgamated considered each of these factors in determining  
2 whether to make the loans to DRIVE.

3 **1) Amalgamated Evaluated DRIVE's Creditworthiness at the Time of the**  
4 **Original Loan Application.**  
5

6 The evidence uncovered during the investigation reveals that Amalgamated followed its  
7 usual and customary underwriting procedures in making these loans to DRIVE in 2002.

8 Thomas Metzinger, the Director of Investments and Pension Administration, initially  
9 requested the loans from Amalgamated on behalf of DRIVE. *See* T. Metzinger Dep. Tr. at 12,  
10 18. In August 2002, Metzinger met with Joseph C. Conner, Jr., then First Vice-President of  
11 Amalgamated Bank, and brought up DRIVE's loan request.<sup>2</sup> *See* T. Metzinger Dep. Tr. at 25,  
12 26, and 27. At this meeting, Metzinger told Conner that DRIVE would pledge future receipts,  
13 e.g., membership contributions, as collateral for the loans. *See* T. Metzinger Dep. Tr. at 26. In  
14 late August or early September 2002, per Conner's request, Metzinger provided DRIVE's  
15 financial statements and a current cash flow statement, which he received from DRIVE's  
16 accountant, Martin Kendall. *See* T. Metzinger Dep. Tr. at 16, 28, and 29.

17 Pursuant to Amalgamated's standard operating procedures, the bank reviewed the request  
18 and the financial information submitted by DRIVE, and performed a standard credit review and  
19 profitability analysis of DRIVE, as evidenced by the Credit Approval Memorandum dated  
20 October 25, 2002. *See* Amalgamated Bank's Response, at p. 3 and Exhibit B, July 26, 2006. A  
21 Dunn & Bradstreet report revealed a clear history rating. *Id.* at Exhibit B. DRIVE's total  
22 revenues for 2000 and 2001 were \$4.2 million and \$4.6 million, respectively. *Id.* at Exhibit B.

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<sup>2</sup> Originally, DRIVE requested a \$300,000 loan, and then it later asked for another \$200,000 loan. *See* T. Metzinger Dep. Tr. at 22, 35.

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1 Amalgamated also considered DRIVE's current cash flows, which reflected similar trends in the  
2 income statement and balance sheet for fiscal year 2002. *Id.* at Exhibit B. Based upon this  
3 information, Amalgamated prepared a profitability analysis for DRIVE and determined it had an  
4 acceptable financial condition, giving it good Obligor Risk and Facility Risk Ratings, meaning  
5 that the borrower has demonstrated cash flow, relatively good credit, and otherwise offered  
6 sufficient collateral. *See* T. Sullivan Dep. Tr. at 78, 79, and 82.

7 There are two notable aspects to Amalgamated's review of DRIVE's credit history. The  
8 first is that draft financial statements were used to evaluate DRIVE's financial condition, and  
9 second, the Credit Approval Memorandum notes that DRIVE's contributions are voluntary, and  
10 therefore, difficult to project. *See* Amalgamated Bank's Response, at Exhibit B, July 26, 2006.

11 Usually Amalgamated required final financial statements from the borrower prior to  
12 approving the loan. *See* Conner Affidavit at ¶ 15. Although a draft financial statement is not  
13 preferred, it is not rare to receive such drafts from other customers. *See* T. Sullivan Dep. Tr. at  
14 91, 109, and 110. The financial statements are one aspect of the overall underwriting process,  
15 and the fact that they are in draft form is taken into consideration with other factors, such as  
16 collateral and covenants, when deciding whether to approve a loan. *Id.*

17 The evidence shows that Amalgamated considered the variable nature of DRIVE's  
18 membership contributions when making the loans. *See* Amalgamated Bank's Response at  
19 Exhibit B, July 26, 2006. There would be two main sources of variability, the future employment  
20 of the DRIVE members and their future willingness to participate in the program. *See* M.  
21 Kendall Dep. Tr. at 80, 81. However, these contributions are small in denomination and there  
22 are many of them, so they come in great waves every two weeks or whenever the payments are

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1 made. *See* T. Sullivan Dep. Tr. at 136, 137. Therefore, as a practical matter, the number of  
2 pledges coming in to DRIVE is “rather overwhelming,” and has been consistent for a number of  
3 years. *Id.* Amalgamated took this into consideration when making the loans. *Id.*

4 It is possible that another bank might not have made these loans to DRIVE because it was  
5 not familiar with dues check-offs or how they work. *See* Conner Affidavit at ¶ 19, May 25, 2007.  
6 However, Amalgamated had a long-term relationship with unions, so it was very familiar with  
7 dues check-offs as a source of income. *Id.* Conner, the Amalgamated Bank First Vice-President  
8 who initially arranged the loans to DRIVE, stated that in his opinion, based upon his knowledge  
9 and banking experience, dues check-offs are a “pretty dependable” source of income. *Id.*

10 All loans are approved by a committee process. *See* T. Sullivan Dep. Tr. at 20, 21, 22, 78  
11 and 79. The evidence showed that Amalgamated followed its usual and customary procedures in  
12 the approval process for the loans to DRIVE. Credit Facility Offering memorandums were  
13 prepared for both loans and reviewed by the loan committee. *See* Amalgamated Bank’s  
14 Response at p. 3 and Exhibit C, July 26, 2006. Both Credit Facility Offerings show the initials of  
15 eleven (11) individuals of Amalgamated including officers of the bank who constituted its loan  
16 review committee. *Id.* In addition, the president of the bank approved the loans before they went  
17 to committee for review. *See* T. Sullivan Dep. Tr. at 87, 88.

18 Once the loans were approved, they were fully and properly documented according to  
19 Amalgamated’s standard operating procedures. *See* Amalgamated Bank’s Response at pp. 3, 4,  
20 July 26, 2006. Each of the following loan documents were executed by an appropriate officer of  
21 DRIVE and delivered to the bank, as is the bank’s custom: Promissory Notes, Continuing  
22 Security Agreements, Deposit Account Pledge Agreement, Covenant Agreements, and

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1 Certificates of Resolutions. *See id.* at Exhibits D, E, G, H, I, J, K, and L. Because the loans were  
2 made to a PAC, the bank took an extra step and counsel reviewed the loan documents for  
3 completeness. *See* T. Sullivan Dep. Tr. at 108.

4 **2) Amalgamated had a Favorable Pre-existing Banking Relationship with**  
5 **DRIVE Prior to the Extension of Credit in 2002.**  
6

7 Amalgamated had an overall good relationship with DRIVE on past loans. *See* T.  
8 Sullivan Dep. Tr. at 57. The bank had previously made loans to DRIVE that were repaid in full  
9 and on time. *See* Amalgamated Bank's Response at p. 6, July 26, 2006.

10 In October of 1998, DRIVE obtained a \$300,000 six-month term loan from  
11 Amalgamated. *Id.* Again, in October of 2000, DRIVE borrowed a total of \$1,000,000 from  
12 Amalgamated on a six-month term loan. *Id.* Both loans were repaid pursuant to their respective  
13 terms. *Id.* Both prior loans were based upon the bank's receipt of a perfected security interest in  
14 DRIVE's receipt of membership contributions and DRIVE's ability to convert such pledges into  
15 cash. *Id.* In addition, the Credit Approval Memorandum sets forth that DRIVE indicated to the  
16 bank that it had in the past obtained two loans from Crestar Bank: one in 1996 for \$500,000 and  
17 in 1992 for \$300,000. *See* Amalgamated Bank's Response at Exhibit B, July 26, 2006.

18 As is typically done by the bank for other customers, DRIVE's previous satisfactory loan  
19 experience and its depository relationship with Amalgamated (e.g., deposit accounts maintained  
20 at the bank and deposit of its membership contributions into those accounts) were factors  
21 considered by the bank in making the loans to DRIVE. *Id.*; *see also* T. Sullivan Dep. Tr. at 81.

22 **3) The Terms of the Loans do not Appear to be Out of the Ordinary or**  
23 **Unduly Favorable to DRIVE.**  
24

25 The loans bore interest at the bank's "Base Rate," which was 4.75% at the origination of  
26 the loans and was a variable rate. *See* Amalgamated Bank's Response at p. 6, July 26, 2006.

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1 This was the bank's usual and customary rate of interest at the time for commercial loans. *Id.*;  
2 *see also* T. Sullivan Dep. Tr. at 120, 121, and 122. Both loans were for a term of six months and  
3 each promissory note set forth a specific maturity date. *See* Amalgamated Bank's Response at  
4 Exhibits D and J, July 26, 2006.

5 Historically, Amalgamated has made loans to private companies, commercial companies,  
6 not for profits, and labor unions. *See* T. Sullivan Dep. Tr. at 19, 20, 26, and 27. In 2006,  
7 Amalgamated made about 45 commercial loans with an average loan amount of \$2.5 million.  
8 *See* T. Sullivan Dep. Tr. at 25. In this matter, it does not appear that the principal amount of the  
9 loans to DRIVE, e.g., \$500,000 was unduly large when compared to other loans made by the  
10 bank. In addition, DRIVE demonstrated an ability to collect contributions that exceeded the  
11 principal amount of the loans by a factor of nine. *See* Amalgamated Bank's Response at p. 7,  
12 July 26, 2006; *see also* T. Sullivan Dep. Tr. at 76.

13 Therefore, the Commission has determined to take no further action as to the Democrat  
14 Republican Independent Voter Education – PAC of the International Brotherhood of Teamsters  
15 and C. Thomas Keegel, in his official capacity as treasurer in connection with its finding that  
16 there is reason to believe they violated 2 U.S.C. § 441b.

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